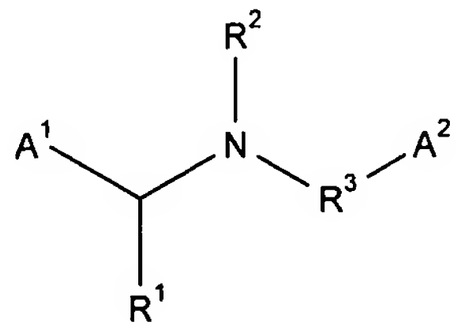
## REMARKS/ARGUMENT

This response is provided under 37 C.F.R. § 1.111 to the Office Action of December 17, 2009.

Claims 1 through 20 are pending in the application. Claims 1 and 14 are amended, and new claims 17 through 20 are added. No additional fee is due.

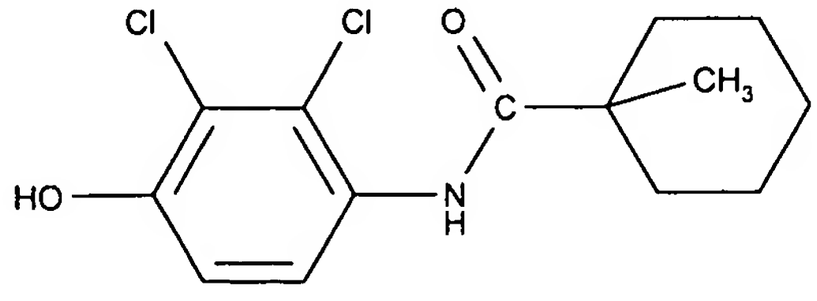
Claims 1 through 16 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Moloney et al. (WO 99/42447) in view of Brandes et al. (U.S. Patent No. 5,532,262).

Moloney et al. disclose compounds of formula (I)




and salts thereof as phytopathogenic fungicides wherein $A^1$ is substituted 2-pyridyl, $A^2$ is optionally substituted phenyl, $R^3$ is -(C=O)-, $-SO_2-$ or -(C=S)-, $R^1$ is hydrogen, optionally substituted alkyl or acyl, and $R^2$ is hydrogen or optionally substituted alkyl, which are useful phytopathogenic fungicides.

Brandes et al. merely disclose that a compound of the formula:



which is nothing at all like the pyridylethylbenzamide derivatives employed in the practice of the present invention, can be combined with known fungicidal active compounds, such as carbendazim and/or diethofencarb and/or iprodione and/or benomyl, among others.

It is understood to be the Examiner's position that Compound (I) is a known fungicide and carbendazim is a known fungicide (as are diethofencarb, iprodione, thiophanate, thiophanate-methyl, and benomyl) and, thus, it would be obvious to use them in combination.

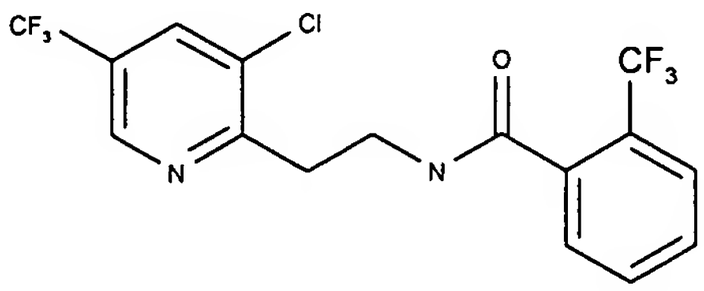
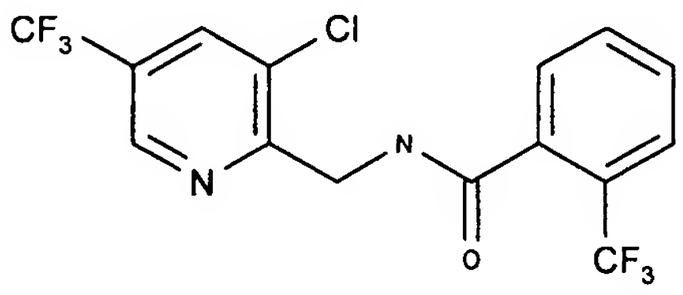
The Applicants acknowledge that compounds of the 2-pyridylethylbenzamide type, which are employed in the compositions of the present invention, have fungicidal action and are disclosed and claimed in co-pending U.S. Patent Application Serial No. 10/524,345, filed February 11, 2005 (U.S. Pub. No. 2005/0234110), and also acknowledge that carbendazim is a known fungicide too. However, it is the Applicants' position that they have discovered a combination that clearly exhibits synergism and is neither disclosed nor suggested by the cited art. They have demonstrated this synergism for this combination in Example 1, using means for determining synergism that is accepted in the art, i.e., the Colby formula, which was published in the journal 15 WEEDS 20-22 (1967). The Examiner's attention is directed to U.S. Patent No. 6,753,339 in which the Colby method of determining synergism was also employed to the satisfaction of the Patent Office. Based on the teachings of the two cited references, a skilled artisan might have expected a fungicide activity of mixtures of a 2-pyridyl*methyl*benzamide, e.g., 2,6-dichloro-N-{[3-chloro-5- (trifluoromethyl)-2- pyridinyl] *methyl*} benzamide, and carbendazim. But the skilled artisan would not have expected any synergy when associating these compounds and, in particular, would not have expected the synergy between the

2-pyridyl*ethyl*benzamides, e.g., N-{2-[3-chloro-5-(trifluoromethyl)-2-pyridinyl]*ethyl*}-2-trifluoromethylbenzamide, and the carbendazim evidenced by the example of the present application. Unexpected results have been shown for the claimed combination and, thus, it logically follows that the combination cannot be obvious.

Additionally, in the prosecution of co-pending U.S. Patent Application Serial No. 10/524,345, referred to above, the examiner stated:

> The difference between the prior art [i.e., Moloney et al.] compound and the instantly claimed compound is the alkylene group between the pyridyl group and the benzamide moiety. In the instant compound, alkylene group is ethylene. In the prior art compound, alkylene group is a methylene group. The prior art compound and the instant compound are homologues of each other. Homologues are compounds that differ by a methylene linkage. Here, the Moloney compounds are also fungicides as are the instant compounds. See line 4 of page 2.
>
> It would have been obvious to one of ordinary skill in the art to synthesize homologues of this class of compounds and compositions. Accordingly, the compounds are deemed unpatentable therefrom in the absence of a showing of unexpected results for the claimed compounds over those of the generic prior art compounds.

In responding to the examiner in that case, the applicants submitted the following experimental data to show unexpected results that demonstrate the benefits in terms of fungicidal activity of an *ethylene* group linking the pyridyl and benzamide moiety with each other, rather than a *methylene* group:

| Compound | | *Botrytis cinerea* | *Alternaria brassicae* |
|---|---|---|---|
| According to the invention |  | Good to very good activity (80-100%) at 330 ppm | Good to very good activity (80-100%) at 330 ppm |
| Compound 1 of U.S. 6,503,933 (Moloney et al.) |  | No activity at 330 ppm | No activity at 330 ppm |

The applicants in that case argued that this finding would have been surprising to the person of ordinary skill in the art and would not have been rendered obvious by Moloney et al. In support of the data, the applicants submitted a Declaration Under Rule 132.

Thus, in the present application, the Applicants have discovered a novel and unobvious combination of fungicides that exhibits a synergistic effect that allows a reduction of the chemical substances spread into the environment and a reduction of the cost of the fungal treatment. The combination of the present invention enables a reduction in the doses of chemical products spread in the environment in order to control fungal attacks of crops, in particular by reducing the doses of the products for application, and increases the number of antifungal products available to farmers for them to find among them the fungicidal agent best suited to their particular use. These advantages are neither taught nor disclosed by the cited art.

Accordingly, it is requested that the rejection of claims 1 through 16 under 35 U.S.C. § 103(a) as being unpatentable over Moloney et al. in view of Brandes et al. be withdrawn.

In view of the foregoing, it is submitted that this application is in condition for allowance, and an early Office Action to that end is earnestly requested.

Respectfully submitted,

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